WP(C) 3839/2007

BEFORE

THE HON'BLE MR. JUSTICE B.K.SHARMA

Heard Mr. A.K. Bhattacharyya, learned senior counsel assisted by Mr. P. Kataki, learned counsel for the petitioner as well as Mr. D. Saikia, learned counsel re presenting the respondents.

At the very outset, Mr. Bhattacharyya, learned Sr. counsel for the petit ioner submits that the petitioner would like to withdraw the statements made aga inst the selection board. He submits that such statements are not by say of attr ibuting malafide exercise of the powers by the members of the selection board. In this connection, Mr. Saikia, learned counsel representing the respondents has drawn my attention to the statements made in Para-4 and 5.

In view of the submissions made by Mr. Bhattacharyya, learned Sr. couns el for the petitioner, the statements made in the writ petition, more particular ly, in Para-5 against the members of the selection board stand withdrawn and del eted.

This now leads us to the grievance raised in the writ petition. The pet itioner is a selected candidate for admission into M.B.B.S. Course. However, he was in the waiting list. At the time of first counseling held on 8.7.2007, his position was at Sl. No.11. Thereafter, some seats fell vacant and upon filling up of the same, the position of the petitioner became Sl. No.9 on 12.7.2007. A t this stage, Mr. Saikia, learned counsel representing the respondents submits t hat although few seats fell vacant, but the seats have not been filled up and t hus, the position of the petitioner still remains at Sl. No.11. However, in th e meantime, some vacancies are likely to arise against 15% quota earmarked again st the Central Government employees. Mr. Saikia, learned counsel representing th e respondents submits that there will be a combined list of State seats and the seats which are likely to arise against the aforesaid 15% quota.

During the course of the aforesaid developments, the petitioner having been offered the seat in the B.D.S Course as the last candidate in the unreserve d category, he accepted the same. According to the respondents, the petitioner cannot now seek admission in MBBS Course. Mr. Bhattacharyya, learned Sr. counse l for the petitioner submits that the petitioner had to accept the B.D.S. Course under compelling circumstances. He further submits that the consideration of the petitioner's case will have to be made as per the merit position obtained in the list. Acceptance of the petitioner of the BDS Course offered to him may n ot be a bar for consideration of his case against the seats in MBBS Course. In t his connection, he has referred to the statements made in Para-11 of the writ petition in which the petitioner has given example of earlier years in which eve n after the admission into BDS Course, the candidates were allowed to switch ove r to MBBS Course.

Considering the aforesaid submissions and the materials on record, more particularly, in view of the fact that at the time of acceptance of the BDS Course by the petitioner, the seats against 15% quota were not available, I dis pose of the writ petition with a direction to the respondents to consider the ca se of the petitioner for admission into MBBS Course and against the State seats as well as 15% quota earmarked for Central Government employees i.e. All India Q uota, Martyrs Quota etc. (AIQM). Mr. Bhattacharyya, learned Sr. counsel for the petitioner submits that the petitioner would forgo the seat offered to him in the BDS Course.

In view of the above and upon abandonment of the seat against the B.D.S. Course by the petitioner, his case shall now be considered by the respondents a gainst the State seats as well as the aforesaid 15% quota. Needless to say that the consideration of the case of the petitioner shall not be in isolation but s hall be on the basis of his merit position in the list.

Writ petition is disposed of.